FILE COPY.

Office Supreme Court U
FILED
NOV 11 190
JAMES H. McKENNEY,
Cl

STATEMENT OF FACTS AND BRIEF.

In the Supreme Court of the United States

OCTOBER TERM, 1904.

No. 93.

ADAMS EXPRESS COMPANY, PLAINTIFF IN ERROR,

v.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

(19,003.)

STATEMENT OF FACTS AND BRIEF.

In the Supreme Court of the United States

OCTOBER TERM, 1904.

No. 82.

ADAMS EXPRESS COMPANY, PLAINTIFF IN ERROR,

v.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

The plaintiff in error was indicted by the grand jury of Madison county, Iowa, for maintaining a nuisance by keeping, with intent to sell, and selling, intoxicating liquors in violation of law, in a certain building and place in said county. The undisputed evidence in the case disclosed that the Adams Express Company is a common carrier engaged in the business of transporting goods and merchandise from one place to another in the United States. That the liquors in controversy, and upon which the indictment was found, were received by its agent at St. Joseph, Missouri, to be transported from that place to St. Charles, in Madison county, Iowa. That they were so transported and delivered to the agent of the plaintiff in error at St. Charles, Iowa, and by him delivered to the consignees whose names were marked upon the packages. That all of the packages were shipped C. O. D. and were not delivered by the Express Company to the consignees until the purchase price was paid thereon. Upon the payment of such purchase price the liquors were delivered by the plaintiff in error to the consignees whose names were written upon the packages.

On the trial in the district court upon the indictment, the jury found the plaintiff in error guilty of the crime of nuisance, and a fine of $350 was assessed against it. The case was appealed to the supreme court of Iowa by plaintiff in error, and the judgment of the court below was affirmed.

Thereupon a writ of error to that court was sued out by plaintiff in error and the cause is now for hearing and determination in this court upon such writ.

The facts in the case are identical with those involved in the case of the *American Express Company v. The State*

of Iowa, with the exception that the liquors received by the plaintiff in error in this case were in fact delivered to the consignees by the plaintiff in error after their arrival at their destination, and were not seized by the state authorities, and that the plaintiff in error herein was indicted for erecting and maintaining a nuisance by the unlawful sale of intoxicating liquors.

The questions of law involved herein are identical in every particular with those in the case of the *American Express Company v. The State of Iowa*, and it is respectfully asked that the brief and argument in that case be taken by this court as a brief and argument herein upon such questions of law.

The statute, under which the indictment was found, is as follows:

SECTION 2382. No one, by himself, clerk, servant, employe or agent, shall, for himself or any person else, directly or indirectly, or upon any pretense, or by any device, manufacture, sell, exchange, barter, dispense, give in consideration of the purchase of any property or of any services or in evasion of the statute, or keep for sale, any intoxicating liquor, which term shall be construed to mean alcohol, ale, wine, beer, spiritous, vinous and malt liquor, and all intoxicating liquor whatever, except as provided in this chapter, or solicit, take, or accept any order for the purchase, sale, shipment, or delivery of any such liquor, or aid in the delivery and distribution of any intoxicating liquor so ordered or shipped, or own, keep, or be in any way concerned, engaged or employed in owning or keeping any intoxicating liquor with intent to violate any provision

of this chapter, or authorize or permit the same to be done; and any clerk, servant, employe or agent engaged or aiding in any violation of this chapter shall be charged and convicted as principal. Provided, that nothing herein shall prohibit traveling salesmen soliciting orders for the purchase, sale, and shipment of intoxicating liquors, from persons legally authorized to sell or dispense the same.

SECTION 2384. Whoever shall erect, establish, continue or use any building, erection or place for any of the purposes herein prohibited, is guilty of a nuisance, and upon conviction shall pay a fine of not less than three hundred nor more than one thousand dollars and costs of prosecution, which shall include a reasonable attorney's fee to be taxed by the court, and stand committed to the county jail until such fine and costs are paid, and the building, erection or place, or the ground itself, in or upon which such unlawful manufacture, or sale or keeping with intent to sell, use or give away said liquors is carried on or continued or exists, and the furniture, fixtures, vessels and contents, are also declared a nuisance, and in addition to the penalties hereinbefore affixed, shall be abated as hereinafter provided.

Respectfully submitted,

CHAS. W. MULLAN,

Attorney General of Iowa,

for Defendant in Error.